

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION BY MCI FOR ARBITRATION OF	)	
CERTAIN TERMS AND CONDITIONS OF A	)	
PROPOSED AGREEMENT WITH BELL SOUTH	)	CASE NO. 96-431
TELECOMMUNICATIONS INC. CONCERNING	)	
INTERCONNECTION AND RESALE UNDER THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

O R D E R

On December 20, 1996, the Commission issued its final Order (the "Order") in the arbitration proceedings between MCI Telecommunications Corporation and MCIMetro Access Transmission Services, Inc. (collectively, "MCI") and BellSouth Telecommunications, Inc. ("BellSouth") wherein it decided, pursuant to the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (the "Act") the major disagreements regarding the parties' proposed interconnection agreement. Minor modifications to those decisions appear in the Commission's subsequent Order dated January 29, 1997.

On February 18, 1997, MCI and BellSouth submitted what they termed "the composite agreement" as required by the Commission's Orders. Both parties state that after the Commission has resolved the issues that remain in dispute, they will submit a complete agreement for Commission approval. The Commission notes that it decides herein only those disputes that are within the parameters of the Commission's original decisions on these matters. The statutory deadline for proposing issues the Commission may consider has passed. See 47 U.S.C. 252(b)(4).

On February 18, 1997, BellSouth submitted a List of Unresolved Issues ("BellSouth List") with proposed contract language and an explanation of its position as to each item on the list. Similarly, on February 24, 1997, MCI submitted its own List of Unresolved Issues ("MCI List") with proposed contract language and supporting rationales.

The Commission has reviewed the portions of the composite agreement regarding the terms upon which there is no dispute and specifically approves those portions. Each of the disputed issues which is within the parameters of the Commission's original decisions is decided herein.

#### DECISIONS ON DISPUTED ISSUES SUBMITTED BY THE PARTIES

##### Notice of changes to BellSouth's Network<sup>1</sup>

The Commission finds that BellSouth's language is reasonable and should be adopted by the parties. As the Commission explained in its Order, at 24-25, there is no reason to assume that BellSouth will not comply in good faith with its obligation to provide the same quality of service to MCI as it provides to itself. The Commission will not require BellSouth to include in its contract the redundant language demanded by MCI.

##### Indemnification and Limitation of Liability<sup>2</sup>

The Commission finds that BellSouth's language is reasonable and should be adopted by the parties. BellSouth is required by law to provide the same quality of

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<sup>1</sup> See MCI List at 2-3; BellSouth List at 1-2.

<sup>2</sup> See BellSouth List at 3-6; MCI List at 4-5.

service to MCI as it provides to itself. MCI's proposed additional terms will not alter the state of the law; nor will they alter the Commission's expectations.

When BellSouth Fails to Switch a Customer to MCI in a Timely manner, BellSouth Will be Deemed to Have Slammed that Customer and Penalties Will be Assessed<sup>3</sup>

The Commission agrees with BellSouth that this issue was not raised during the arbitration proceeding and is therefore not an appropriate subject for consideration here. Accordingly, MCI's proposed contract language is rejected. However, the Commission will expeditiously entertain complaints based upon any incumbent local exchange carrier's ("ILEC") failure, within a reasonable time, to switch the service of a requesting customer to the competitor chosen by that customer.

"More Favored" Provisions<sup>4</sup>

BellSouth correctly states its obligations under the Act to make available to other carriers specific terms offered within an agreement. Pursuant to the contract language BellSouth suggests, MCI may even have the alternate terms as of the date the agreement with the other carrier is approved by the Commission, if MCI notifies BellSouth that it wishes to adopt those terms within 60 days. MCI seems to imply that BellSouth should be required to make an affirmative offer to MCI (and presumably to every other carrier with which it has an interconnection agreement) of all terms it reaches with all other carriers. Such a responsibility would place an unnecessary burden on BellSouth. BellSouth's language is reasonable and is hereby approved.

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<sup>3</sup> BellSouth List at 7; MCI List at 6.

<sup>4</sup> BellSouth List at 8-10; MCI List at 7.

#### Transition Period Following Termination<sup>5</sup>

The parties agree that MCI generally should be permitted to terminate, inter alia, services or elements provided under the Agreement upon thirty days' notice. The parties also agree that the entire agreement may not be terminated by MCI in this fashion. However, BellSouth states that applicable tariffs may provide differently and that if they do, the tariff should prevail. BellSouth contends that some of its services provide a term discount and these come "with a termination liability" which MCI should not be able to avoid. MCI says BellSouth's retail tariffs are inapplicable. However, if MCI buys services with a tariffed volume discount, then tariff termination liability should apply.

#### Audits<sup>6</sup>

Both parties propose language enabling MCI to perform audits of BellSouth. They disagree as to two key issues. First, BellSouth wishes to audit MCI, a provision to which MCI will not agree, stating that it is unreasonable for suppliers to audit their customers. Second, MCI wishes to perform up to four audits per year, as it deems necessary. BellSouth contends that such extensive presence on BellSouth's premises would cause serious disruption, particularly since the same permission to audit would have to be accorded to other carriers with which BellSouth does business. The Commission concurs with the reasoning of MCI as to the first issue, and with BellSouth as to the second. The language incorporated into the agreement shall permit MCI one audit per year, as necessary, with no reciprocal privilege for BellSouth.

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<sup>5</sup> BellSouth List at 11-12; MCI List at 8.

<sup>6</sup> BellSouth List at 13-15; MCI List 9-10.

In addition, the Commission will not require BellSouth or any other carrier to be responsible for a competitor's audit expenses, should readjustments be required as a result of these audits. The recovery of the charges plus a reasonable interest penalty is sufficient. One company should not bear the burden of another when insuring compliance with any agreement.

Finally, MCI's proposal that the adjustment penalty should be at the highest interest rate allowable by law for commercial transactions is unacceptably vague. Therefore, the Commission will order the interest rate to be at prime. Since borrowing at prime does not require compounding, the Commission will not require it in this case.

#### Branding<sup>7</sup>

BellSouth's proposed terms would not require branding of operator assisted, directory assistance, and repair service calls when such services are resold pursuant to Section 251(c)(4). BellSouth claims that such branding requires customized routing, which the Commission has not required for resold services. MCI wishes to require branding of all services when BellSouth brands its own. MCI contends its proposed language comports with the Commission's Order in this case.

MCI is correct. BellSouth is required to brand MCI's service when it brands its own. Restrictions on branding may not be unreasonable or discriminatory, as this Commission has previously held.

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<sup>7</sup> BellSouth List at 16-17; MCI List 11.

The Commission will not prescribe for the parties language imposing or denying liability for failure to live up to contractual or other legal obligations. Complaints on such issues should be brought to the Commission.

#### Prices<sup>8</sup>

The Commission agrees with BellSouth's position in regard to the price schedule text. See BellSouth List at 19. MCI overreaches in attempting to impose upon BellSouth costs appropriately paid by MCI for any construction necessary to comply with the interconnection request. Additional TELRIC studies submitted by BellSouth will be dealt with in further proceedings in this docket as explained below.

#### Line Information Database Performance Measurements<sup>9</sup>

The Commission stated, Order at 24-25, that it will not require BellSouth to agree to specific performance standards. There is no reason to assume that BellSouth will not provide parity of service to other providers as required by law. MCI's proposed language is rejected.

#### Transport and Termination Charges<sup>10</sup>

BellSouth objects to language requiring MCI to be compensated for termination of BellSouth's calls at a rate symmetrical to BellSouth's rate for tandem switching, even though MCI lacks a tandem switch. BellSouth suggests that MCI should be compensated on the basis of the elements used in termination. BellSouth also opposes

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<sup>8</sup> BellSouth List at 18-20 and Addendum; BellSouth addendum dated April 16, 1997; MCI List at 12-23.

<sup>9</sup> MCI List at 24-25.

<sup>10</sup> BellSouth list at 21-22; MCI List at 27-28.

language requiring MCI to be compensated at a rate symmetrical to BellSouth's rate for tandem switching when MCI interconnects at end-office switches rather than at a tandem switch. MCI wishes to be compensated for termination of BellSouth calls at a rate symmetrical to BellSouth's rate for tandem switching, claiming that such an arrangement is supported by the Act and by 47 C.F.R. 51.701. MCI further claims, correctly, that the FCC has appropriately focused pricing on functionality and not on the actual network elements used.

The Commission finds that the language proposed by MCI should be adopted with one modification. When MCI interconnects at BellSouth's end-office switches that are not tandem switches, MCI should be compensated the same as BellSouth for terminating calls over direct end-office trunking.

#### Definition of Spare Capacity<sup>11</sup>

The Commission agrees with BellSouth that the issue is not ripe for resolution at this time. The Commission has already stated, in its Order, at 23, that disagreements on reserve capacity should be brought to the Commission through the complaint process. Accordingly, the Commission will not require the parties to incorporate into their agreement any language on this issue.

#### Encumbrances on BellSouth's Ability to Convey Its Property Rights<sup>12</sup>

MCI claims its rights should be protected in the event of BellSouth's conveyance of its assets to another party. However, the Commission agrees with BellSouth that this

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<sup>11</sup> BellSouth list at 23; MCI List at 29.

<sup>12</sup> BellSouth List at 24; MCI List at 30.

issue was not among those properly raised in the arbitration proceeding. Accordingly, the Commission will not prescribe terms for the parties' contract on this issue.

MCI's Request for Common Duct for Emergencies<sup>13</sup>

The Commission agrees with BellSouth that, like the issue regarding definition of spare capacity, this matter is not ripe for resolution at this time. The complaint process is sufficient to deal with problems if they occur.

Procedures for Pumping and Purging BellSouth's Manholes<sup>14</sup>

The parties disagree as to whether MCI should follow BellSouth's procedures in this regard or its own. This issue was not properly raised by either party in this arbitration. Therefore, the Commission will not address it here.

Compliance with Environmental Laws<sup>15</sup>

This issue was not raised by either party in this arbitration, and its having been raised here is puzzling. The Commission will not address this matter further except to note that it anticipates the parties will comply with federal law.

BellSouth's Provision of Information Relating to Availability of Space; Environmental, Health, and Safety Inspections<sup>16</sup>

Reasonable access to information is necessary and must be provided to MCI in such a way as to ensure parity. The Commission declines, however, to require specific contract language on this subject. The complaint process is sufficient to deal with

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<sup>13</sup> BellSouth List at 25; MCI List at 31.

<sup>14</sup> BellSouth List at 26; MCI List at 35.

<sup>15</sup> BellSouth list at 27-28; MCI List at 36.

<sup>16</sup> BellSouth List at 29-30; MCI List at 37-38.



problems in this area if they occur. The issue as to whether BellSouth should be required to search for information regarding environmental data regarding its rights-of-ways has not been brought before the Commission in this arbitration proceeding. Accordingly, the Commission will not address it now.

BellSouth's Provision of Customer Credit History To MCI<sup>17</sup>

The Commission declines to require BellSouth to furnish the credit histories of its customers regardless of methods used unless a particular customer has personally authorized BellSouth to provide such information. A blanket letter of authorization is not sufficient.

Customer Service Records<sup>18</sup>

The Commission wishes to ensure that each customer can change local exchange carriers with a minimum of difficulty. However, it is also important to ensure that customers are not "slammed" in the local market. For purposes of changing carriers, therefore, a signed letter of authorization from MCI to BellSouth should be sufficient. MCI will be responsible for maintaining records showing that its customers actually desired its service. Nevertheless, customer service records -- which need not be obtained by MCI prior to providing service -- should not be released without BellSouth's having received a letter of authorization from the customer or having participated in a three-way call with MCI and the customer.

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<sup>17</sup> BellSouth List at 31, 32; MCI List at 39, 40.

<sup>18</sup> BellSouth List at 33, MCI List at 41.

### Billing of Calls from MCI Subscribers to Information Service Providers<sup>19</sup>

The issue was not raised in the arbitration proceeding. Consequently, the Commission will not address it now.

### Branding of 611 Repair Calls<sup>20</sup>

The Commission will not require BellSouth to provide the 611 code for access to MCI's repair center. MCI claims its subscribers should have access to repair centers at parity. However, because BellSouth itself does not use the 611 code, parity is not an issue.

### Routing of Directory Assistance Calls<sup>21</sup>

MCI requests customized routing for its directory assistance calls though it purchases BellSouth tariffed services for resale. BellSouth is not required to alter the manner in which it provides any tariffed service when it provides that service to another carrier for resale. However, when MCI buys unbundled elements to provide service, routing to MCI Directory Assistance is required.

### Branding of Directory Assistance<sup>22</sup>

MCI is correct that the Commission held that BellSouth should brand directory assistance for MCI if it brands its own. Failure to so brand is an unreasonable restriction

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<sup>19</sup> BellSouth List at 34.

<sup>20</sup> BellSouth List at 35; MCI List at 42.

<sup>21</sup> BellSouth List at 36-38; MCI List at 43-46.

<sup>22</sup> BellSouth List at 39; MCI List at 47.

on resale except in cases where it is technically unfeasible. Accordingly, the language proposed by MCI shall be incorporated into the parties' agreement.

Selective Routing<sup>23</sup>

The Commission finds that BellSouth's interpretation is in line with the Commission's Order dated January 29, 1997. If a CLEC resells BellSouth's tariffed services, selective routing is not required. Although not specifically addressed in the January 29 Order, directory assistance offered as part of the package to resellers of an ILEC's network is included as a resold service for which selective routing is not required. If a CLEC offers service through unbundled network elements, then selective routing is required, to the extent that it is technically feasible. Accordingly, BellSouth's language shall be incorporated into the parties' agreement.

Busy Line Verification in Context of Interim Number Portability<sup>24</sup>

This issue was not presented during the arbitration proceeding. Consequently, the Commission will not address it now.

Fraud Prevention, Lost Revenues Resulting from Hacker Fraud, Clip-On Fraud, and Other Unauthorized Entry into BellSouth's Network<sup>25</sup>

These issues were not raised by either party during the statutory time period. Consequently, the Commission will not consider them now.

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<sup>23</sup> BellSouth List at 40-44; MCI List at 49-54.

<sup>24</sup> BellSouth List at 45; MCI List at 55.

<sup>25</sup> BellSouth List at 46-48; MCI List at 56-59.

### ADDITIONAL PROCEEDINGS TO BE REQUIRED

Finally, MCI has requested a hearing on additional TELRIC studies filed by BellSouth subsequent to the entry of the Commission's Order. As MCI states, it clearly has an interest in the final determination of the Commission in regard to the reasonableness and appropriateness of these studies. Consequently, further proceedings in which MCI will participate are appropriate, and a hearing and informal conference should be scheduled.

MCI further asks that the requested hearing be conducted in a separate docket in order to avoid delaying implementation of local exchange competition. However, inquiry into cost studies underlying the prices to be charged in the parties' interconnection agreement unquestionably is part and parcel of this proceeding. Accordingly, the informal conference and hearing shall be scheduled in this docket, and all parties should cooperate to the fullest extent so that this final matter may be dealt with as expeditiously as possible. Persons to testify at the hearing, as well as persons authorized to negotiate on behalf of the parties, should attend the informal conference so that settlement options may be fully explored. Further, AT&T Communications of the South Central States, Inc. ("AT&T") should be sent a copy of this Order so that it is on notice that BellSouth TELRIC studies relevant to its arbitration proceeding, Case No. 96-482,<sup>26</sup> are being further scrutinized. AT&T should, accordingly, be permitted to intervene in this proceeding should it choose to do so.

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<sup>26</sup> Case No. 96-482, The Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C.

IT IS THEREFORE ORDERED that:

1. The decisions reached herein shall be incorporated into the parties' interconnection agreement.

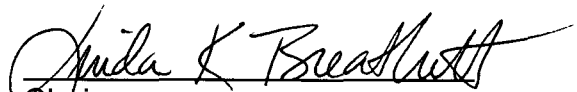
2. An informal conference for the sole purpose of discussing TELRIC studies filed by BellSouth subsequent to the Commission's Order in this case is scheduled for May 29, 1997 at 10:00 a.m., Eastern Daylight Time, in Conference Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky.

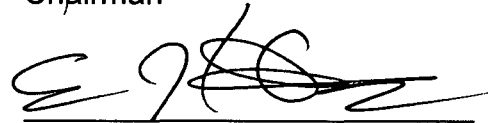
3. A hearing on TELRIC studies filed by BellSouth subsequent to the Commission's Order in this case is scheduled for June 10, 1997, at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky.

4. A copy of this Order shall be sent to AT&T for purposes of notifying it that further proceedings regarding BellSouth's additional TELRIC studies are pending.

Done at Frankfort, Kentucky, this 19th day of May, 1997.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director